IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 220 of 1999

Between:

Smt. Chigurupalli Vijaya, w/o Lakshman Rao, aged 48 years, Occupation: Household, r/o Boddepalli (V), Ponduru (M), Srikakulam District.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, rep. By Secretary to Government, Revenue (Assignment) Department, Secretariat, Hyderabad.
2. The Commissioner of Land Revenue, Government of Andhra Pradesh, Hyderabad.
3. The District Collector, Srikakulam District, Srikakulam.
4. The Mandal Revenue Officer, Ponduru (M), Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction more in the nature of Writ of Certiorari calling for the records connected with G.O.Ms.No.812, Revenue (ASN.I) Deptt., dt.22.10.1998 of the first respondent which confirms the proceedings of the second respondent in Procs.No.BCW-5/2742/90, dated 04.08.1994 and the proceedings of the Joint Collector, Srikakulam in Rc.No.2331/86, dated 18.04.1990 and quash as being illegal, contrary to the assignment policy and the rules there under of the Government, violative of Article 14 and 21 of the Constitution of India apart from violative of the principles of natural justice and consequently confirm the assignment of land to an extent of Ac.2.70 cents in Survey No.206 and Ac.0.65 cents in Survey No.219/4 totalling Ac.3.35 cents situate in Boddepalli (V), Ponduru (M), Srikakulam

District in favour of the petitioner as per the D.Form Patta No.8/1395, dated 29.09.1985.

Counsel for the Petitioner: MR. J.VENUGOPALA RAO

Counsel for the Respondent Nos.1 to 4: GP FOR ASSIGNMENT

The Court made the following :

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.220 of 1999

O R D E R :

The petitioner herein was granted D-Form patta in respect of the land admeasuring Acs.2-70 in Survey No.206, 0-65 cents in Survey No.219/4 totalling to Acs.3-35 situated in Boddepalli village, Ponduru Mandal of Srikakulam District. The land was described in the Revenue records as 'Koneru Poramboke'. The petitioner claims that pursuant to the patta, he was handed over possession and his name was also entered in the Revenue records. In the year 1987, the Revenue Divisional Officer, Srikakulam, conducted enquiry into certain allegations against the assignment made to the petitioner and later dropped the enquiry. However, the Mandal Revenue Officer, Ponduru, granted patta in respect of the same land in favour of Sri Boddepalli Satyam and Smt. Boddepalli Kalavathi. Aggrieved by the same, the petitioner preferred an appeal to the Revenue Divisional Officer, Srikakulam, who remanded the matter for conducting fresh enquiry.

In the meanwhile, the Joint Collector, Srikakulam, conducted *suo-motu* enquiry with regard to the assignment made in favour of the petitioner as well as the other two persons. By order dated 18-4-1990 the Joint Collector cancelled the assignment of the petitioner on the ground that the tankbed lands cannot be assigned. The petitioner again preferred appeal before the Commissioner of Land Revenue, which was also dismissed on 4-8-1994. The petitioner filed a further revision/appeal before the Government, who by orders passed in G.O.Ms.No.812, Revenue (ASN-I) Department, dated 22-10-1998 dismissed the revision holding that as per B.S.O.15 (4)(a) the tankbed poramboke lands cannot be assigned for the purpose of agriculture. Assailing the said G.O., the present writ petition is filed.

A counter affidavit is filed opposing the writ petition. It is stated that the Joint Collector conducted a detailed enquiry after issuing a show-cause notice to the assignee and found that the assignments have been made without ayan conversion from poramboke to assessed waste; that the lands were not withdrawn from Gram Panchayat, Boddepalli; and that the lands are classified as 'Koneru Poramboke' vested with Gram Panchayat. It is also stated that according to BSO 15(3), the lands which are prohibited category, like tank bed lands, cannot be assigned nor leased out.

It is mainly contended that as per BSO 15(3) the lands mentioned in the prohibited category, like tank bed lands, which are not required as such, can be assigned or leased out to landless poor persons. I am afraid the submission cannot be accepted.

In THE WATER USERS ASSOCIATION, THIMMAYA GARI PALLE CHERUVU TANK v. GOVERNMENT OF ANDHRA PRADESH (W.P.No.20323 of 2000, dated 6-2-2002) after referring to paragrah (4) of BSO 15 as well as decisions of the Supreme Court in VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA, MEHTA M.C. v. UNION OF INDIA, RURAL LITIGATION AND ENTITLEMENT KENDRA v. STATE OF U.P., SUBHASH KUMAR v. STATE OF BIHAR, HINCH LAL TIWARI v. KAMALA DEVI and a Division Bench judgment of this Court in T. RAMAKRISHNA RAO v. HUDA, I have considered this aspect of the matter having regard to BSO 15(3) and 15(4) and laid down as under:

The submission of the learned Additional Advocate General that the proviso to BSO 15(4) permits the assignment of land for agricultural purpose if the land whose assignment is prohibited is not required presently is without any substance. The proviso mentions two categories of lands indicated at BSO 15(4)(ii)(g), (j), (k), and (m). The categories of land mentioned in BSO 15(4)(ii)(e) is conspicuous by its absence. Further, the categories of lands indicated in BSO 15(4)(ii)(a) refers to poramboke lands reserved for depressed classes or for any public purpose. The land in question in respect of which proposals are afoot is classified in the revenue records as tank poramboke. It squarely falls within the category of lands mentioned in BSO 15(4)(ii)(a), even if it is foreshore of tank bed. To my mind, this is the reason why on two occasions, the proposals were not accepted though lot of correspondence took place between the Revenue Department and Irrigation Department. Hence, **it must be held that any land reserved for any public purpose, cannot be assigned, whether or not it is a tank bed poramboke or foreshore tank bed…. The life of a water body is not 100 years to commensurate with normal life span of a man. The water body plays an important role in the ecology and environment besides having its economic purpose of providing water for irrigation and drinking purposes. Any use of land, which does not satisfy the principle of sustainable development, would be detrimental to a water body.**

(emphasis supplied)

Having regard to the judgment of the Supreme Court in HINCH LAL TIWARI v. KAMALA DEVI (Supra-5), I also laid down that revenue authorities before granting

any patta for agricultural purposes in respect of tank foreshore land within the vicinity of irrigation tank, must keep in view the environmental and ecological aspects, which are inseparably connected with the water body. It may also be observed that private interest of landless poor persons to seek assignment of suitable land for cultivation must be subject to larger right of community and society to maintain ecological balance in the nature to avoid a doom.

In view of the law laid down by the Supreme Court, the tank bed lands or the lands reserved as tank bed poramboke cannot be assigned for the purpose of agriculture. Therefore, I do not find any reason to interfere with the orders passed by the respondents.

The writ petition is devoid of merits and accordingly dismissed. No costs.

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(V.V.S. RAO, J.)

26-07-2004.

Msr.

To

1. The Secretary to Government, Revenue (Assignment) Department, Government of A.P., Secretariat, Hyderabad.
2. The Commissioner of Land Revenue, Government of Andhra Pradesh, Hyderabad.
3. The District Collector, Srikakulam District, Srikakulam.
4. The Mandal Revenue Officer, Ponduru (M), Srikakulam District.
5. Two CCs to G.P for Assignment, High Court of A.P., Hyderabad (OUT)
6. Two CD copies.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.220 of 1999

Dt.26-07-2004.

(Msr)